

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JASON V. BACA,

Plaintiff,

v.

No. CIV 13-1247 MCA/CEG

BERNALILLO COUNTY METROPOLITAN  
DETENTION CENTER (BCMDC),  
C/O STANFORD,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and rule 12(b)(6) of the Federal Rules of Civil Procedure, on Plaintiff's civil rights complaint. Plaintiff is incarcerated, appears pro se, and is proceeding in forma pauperis. For reasons set out below, certain of Plaintiff's claims will be dismissed.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under § 1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted." The Court also may dismiss a complaint *sua sponte* under rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In reviewing Plaintiff's pro se complaint,

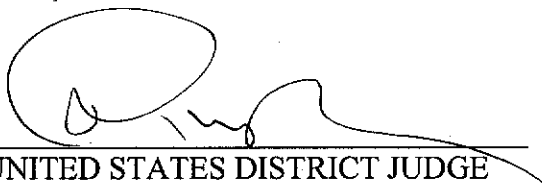
the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *See Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

The complaint alleges that, while Plaintiff was asleep at the Bernalillo County Metropolitan Detention Center (BCMDC), Defendant C/O Stanford “ripped a sheet off of [his] face. . . [cutting] a deep gash in [his] neck and right shoulder.” Defendant C/O Stanford subsequently threatened Plaintiff with further assaults if he reported the incident. Plaintiff also asserts a claim against Defendant BCMDC for negligent hiring and failure to maintain a safe environment. Plaintiff’s allegations appear to state claims under the First and Eighth Amendments against Defendant C/O Stanford. The complaint seeks damages.

No relief is available in this § 1983 action on Plaintiff’s claim against Defendant BCMDC. “[A] detention facility is not a person or legally created entity capable of being sued.” *Aston v. Cunningham*, No. 99-4156, 2000 WL 796086, at \*4 n.3 (10th Cir. June 21, 2000) (quoted in *White v. Utah*, 5 F. App’x 852, 853 (10th Cir. 2001)). The Court will dismiss Plaintiff’s claim against this Defendant.

IT IS THEREFORE ORDERED that Plaintiff’s claim against Defendant Bernalillo County Metropolitan Detention Center is DISMISSED; and Defendant Bernalillo County Metropolitan Detention Center IS DISMISSED as a party to this action;

IT IS FURTHER ORDERED that the Clerk is directed to issue notice and waiver of service forms, with copies of this Order and the complaint, for Defendant C/O Stanford.



UNITED STATES DISTRICT JUDGE